

IN THE MATTER OF
CHESTER BURR RENNER TRADING AS HOME ARTS

COMPLAINT, FINDINGS, AND ORDERS IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5954. - Complaint, Feb. 12, 1952—Decision, Nov. 4, 1952

Where an individual engaged in the sale of colored, convex enlargements of photographs and of frames and glass therefor, mostly to housewives, through sales agents who solicited orders, followed by "proof passers" who, exhibiting the enlargement in black and white, inquired as to the customer's wishes as to colors and, mentioning the matter for the first time, sought to sell the customer the much more costly frame and glass—

- (a) Falsely represented through his sales agents that he was offering colored enlargements of the customer's photographs or snapshots for a "special" or "reduced" price, or at "cost of production"; and
- (b) Similarly represented such prices were available to the customer who drew by chance from a number of envelopes containing slips of paper a so-called "lucky envelope";

The facts being the \$3.98 charged for the colored enlargement was his regular price; practically all purchasers drew a "lucky envelope" and all might purchase a colored enlargement at the price quoted; and the procedure was merely a scheme to get entry into homes of prospective customers and facilitate sales;

- (c) In many instances exhibited framed colored pictures as illustrative of his work and stated that any enlargement ordered would be of the same quality as the sample; notwithstanding the fact the enlargements were frequently inferior to the samples thus exhibited;
- (d) Failed properly to disclose to customers prior to the sale of the product and the collection of a part or all of the price, that the enlargements were of a "convexed" shape, through the word's inclusion on the subsequently given certificates;

With the result that purchasers were led into the erroneous belief that such enlargements were suitable for framing in the conventional type frame and of inducing their orders in such belief; and

- (e) Represented through said "proof passer" who later called on the customer that because of the picture's convex shape an ordinary frame would not fit, that the picture would not look right or would crack if a frame of the special type sold by him was not ordered, and that the picture was baked, sealed or pressed therein in a special way, with specially constructed non-breakable glass;

The facts being the pictures were placed in the frames in a conventional manner, with ordinary breakable glass; and the entire scheme was a form of bait merchandising which had for its purpose the sale of frames and glasses therefor from which said individual made a substantial profit, rather than

the sale of the enlargements from which he made little if any profit; and was intended to and did mislead the purchaser and force him to buy something which he did not originally intend to do;

With effect of misleading and deceiving the purchasing public as to the nature of the original offer and the quality, value, and usual selling price of the enlargements, and of unfairly placing purchasers in the position where they felt obliged to purchase frames and glasses from him; and of causing a substantial number thereof to purchase substantial quantities of such products.

Held, That such acts and practices, under the circumstances set forth, constituted unfair and deceptive acts and practices in commerce.

As respects certain additional charges in the complaint, namely, that the enlargements were not painted in oil but that the color was applied by an air brush, and that the receipt or certificate which so stated was not delivered or shown to the customer until all or part of the purchase price had been paid; and that the so-called "artist" who approached the prospective customer was only another one of respondent's agents known as a "proof passer": such charges were not sustained in the record by reliable, probative and substantial evidence.

Before *Mr. John Lewis*, hearing examiner.

Mr. Jesse D. Kash for the Commission.

Griswold, Leeper, Miller & Corry, of Cleveland, Ohio for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Chester Burr Renner, individually and trading as Home Arts, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Chester Burr Renner is an individual trading as Home Arts, with his principal office and place of business located at 14123 St. James Avenue, Cleveland, Ohio.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the solicitation for sale and the sale and distribution of colored enlargements of photographs and frames and glasses therefor. Respondent has caused his said products, when sold, to be transported from the State of Ohio to purchasers thereof located in various other States of the United States and has maintained a course of trade in said products, in commerce, between and among the various States of the United States. His volume of business in such commerce is and has been substantial.

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PAR. 3. Respondent's products are sold by means of house-to-house solicitation and he has adopted and put into use a sales plan or method as follows:

(a) Respondent and his duly authorized agents, when calling upon prospective purchasers, state that, in conjunction with an advertising campaign which they are conducting in the neighborhood, they are offering oil painted enlargements of photographs for the special or reduced price of \$3.98 and inquire if the prospective customer does not have a photograph which he or she wishes to have enlarged and colored. On many occasions respondent and his sales agents have represented that the company, in furtherance of its advertising campaign, is conducting a "lucky draw" and induce the customer to take a chance by drawing from a number of envelopes a so-called "lucky envelope." Respondent and his sales agents represent that the customer who is fortunate enough to draw the "lucky envelope" is to receive an oil painted portrait of any photograph "free," except for the incidental sum of \$3.98, which is stated to be the cost of production.

In some instances respondent and his agents have exhibited enlarged colored pictures as illustrative of the type of work done and have stated that if an enlargement is purchased it will be of the same quality as the samples exhibited. If a purchase is made a part or all of the purchase price is collected and a receipt or certificate given. Respondent and his agents state that another agent, referred to as an "artist," will call in a short time with the enlargement to obtain information as to the colors which the customer desires to be used. At the conclusion of a sale, a certificate, in the following form, is presented to the customer:

This Certificate
Entitles Bearer -----
to one 10 x 16 Convexed

NATURAL FINISHED PORTRAIT (Not Oil)
(without frame) for cost of production, \$3.98

Groups One Dollar Extra for Each Additional Head

In a few days, the Proof of your Portrait will be shown at your home and the cost of production must then be paid.

YOU ARE NOT OBLIGED TO ORDER FRAME
READ THIS CONTRACT

This Portrait is Made by the Artist
Over A Print With an Air Brush

We only ask that you appreciate this work and be kind enough to display it and recommend it at its true worth and not at the amount you expended for it.

All photographs returned with finished work

(b) Subsequently, respondent or his agents call upon the customers, exhibit the enlargement, collect the balance due, and inquire as to the desire of the customers with respect to colors. At this point and for the first time respondent or his agent mention a frame and glass for the enlargement stating that if the enlargement is not framed it will become discolored, faded, cracked and worthless and call to the attention of the customers for the first time that the enlargement is convex in shape, point out that it will not fit into a regular frame provided with regular flat glass and state that a frame and glass into which it will fit can be purchased only from correspondent as such frames and glasses are not available at stores. At this time respondent and his agents represent further that it is necessary to purchase a frame with a convex glass for the reason that the enlargement is baked into the frame and further represent that the glass is of special construction and unbreakable. Respondents and their agents at this time exhibit sample framed colored enlargements and state that the colored enlargements and frame will be of the same quality as those exhibited.

(c) If a frame is ordered a part or all of the purchase price is collected and afterward the framed colored enlargement is delivered and the balance due, if any, collected.

PAR. 4. The sales plan, as above outlined, used by respondents and the statements and representations made by them and their authorized agents in connection therewith, constitute misleading and deceptive acts and practices in the following particulars: The price of \$3.98 charged for the colored enlargement is not the cost of production nor a special or reduced price but is the regular and usual price charged for the merchandise; said so-called "lucky envelope" gives the holder thereof no advantage in price whatsoever, for practically all purchasers draw a "lucky envelope" and all purchasers may purchase said "paintings" or "portraits" at the price quoted by respondent in making the so-called "special introductory and advertising offer." In truth and in fact, said procedure is merely a sales scheme employed to gain entry into the home of the prospective customers and to secure from the customer a photograph or snapshot, and thus more easily facilitate the sale thereafter of a picture and frame; the enlargements are not painted in oil but the color is applied by an air brush and while the receipt of certificate so states, it is not delivered or shown to the customer until all or a part of the purchase price has been paid; the so-called "artist" who approaches the customer on the second visit is merely another of respondent's agents known as a "proof passer"; frequently the enlargements are greatly inferior in quality to those exhibited as samples.

Respondents, by failing to disclose that the enlargements are of a convex shape, prior to the sale thereof and collection of a part of all the purchase price, lead purchasers into the erroneous belief that such enlargements are the usual and conventional type of enlarged photographs, that is, having a flat surface and suitable for framing in an ordinary frame, and the failure to disclose such fact constitutes an unfair and deceptive act and practice. The enlargements are not baked into the frame but are merely placed in the frame in the conventional manner. The glass provided with the frames is not of special construction but is common glass in a convex shape and may be broken.

In truth and in fact, while the public is led to believe through the statements and representations made by respondent and his agents that respondent is engaged in selling colored enlargements, the entire selling scheme and plan is designed and put into operation for the sole purpose of selling frames and glasses therefor, in which transactions respondent makes a handsome profit, rather than the sale of enlargements which sales result in an actual financial loss to respondents.

PAR. 5. The use by the respondent of the plan, acts, practices, methods, and representations in connection with the offering for sale and sale of his said products in commerce, as aforesaid, including the failure to reveal essential and important facts in connection therewith, has had and now has the tendency and capacity to and does mislead and deceive the purchasing public concerning the actual character and purpose of the original offer, including the identity of the actual product respondent proposes to sell and concerning the quality, value, and usual selling price of said enlargements and unfairly place purchasers in the position where they are required to purchase frames and glasses from respondents in case they wish to have the enlargements framed, which is usually the case. The aforesaid acts and practices lead purchasers erroneously to believe that the representations so made and used by the respondent and the implications arising therefrom are true and cause a substantial number of the purchasing public to purchase substantial quantities of said products.

PAR. 6. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and

Order to File Report of Compliance," dated November 4, 1952, the initial decision in the instant matter of hearing examiner John Lewis, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 12, 1952, issued and subsequently served its complaint in this proceeding upon respondent, Chester Burr Renner, an individual trading as Home Arts, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said Act. After the issuance of said complaint and the filing of respondent's answer thereto, hearings were held at which testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the above-named hearing examiner, theretofore duly designated by the Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final consideration by said hearing examiner upon the complaint, the answer thereto, testimony and other evidence, and proposed findings as to the facts and conclusions presented by counsel, oral argument not having been requested; and said hearing examiner, having duly considered the record herein, finds that this proceeding is in the interest of the public and makes the following findings as to the facts, conclusion drawn therefrom, and order:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Chester Burr Renner, is an individual trading as Home Arts, with his principal office and place of business located at 14123 St. James Avenue, Cleveland, Ohio.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the solicitation for sale and the sale and distribution of colored enlargements of photographs, and frames and glasses therefor. Respondent has caused his said products, when sold, to be transported from the State of Ohio to purchasers thereof located in various other States of the United States and has maintained a course of trade in said products, in commerce, between and among various States of the United States. His volume of business in such commerce is and has been substantial.

PAR. 3. Respondent's products are sold mainly through house-to-house solicitation by sales agents employed by respondent for such purpose. Most of the prospective customers are housewives. The sales

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agents are supplied with order blanks, receipts and framed colored photographs purporting to be samples of work done by respondent. In the sale of his said products, respondent's duly authorized representatives use the following sales plan or method and make the following representations:

(a) Respondent's representatives when calling upon a prospective customer ask whether the customer has a photograph or snapshot which she wishes enlarged and colored, stating on a number of occasions that respondent is offering colored enlargements for a "special" or "reduced" price, or at "cost of production." Respondent's representatives have also made such representations in connection with the use of a "draw" in the operation of which the customer is asked to take a chance by drawing from a number of envelopes containing slips of paper a so-called "lucky envelope." It is represented that the customer who draws the so-called "lucky envelope" will receive a colored photographic enlargement of any photograph she wishes, at a "special" or "reduced" price, or at a "discount," or at "cost of production." The price at which such enlargement is offered is \$3.98 for an enlargement of a picture of a single individual, plus \$1.00 for each additional person appearing on the enlargement.

In many instances respondent's representatives exhibit to the prospective customer framed colored pictures, some in enlarged form and some in miniature, as illustrative of the type of work done by respondent and state that if the customer orders an enlargement it will be of the same type, quality, and workmanship as the sample picture. If a purchase is made, the customer has the option of paying the entire purchase price or giving the representative a deposit on account. At the conclusion of the sale the customer usually receives a receipt or certificate in the following form:

This Certificate
Entitles Bearer -----
to one 10 x 16 Convexed
NATURAL FINISHED PORTRAIT (Not Oil)
(without frame) for cost of production, \$3.98
Group One Dollar Extra for Each Additional Head

In a few days, the Proof of your Portrait will be shown at your home and the cost of production must then be paid.

YOU ARE NOT OBLIGATED TO ORDER FRAME
READ THIS CONTRACT

This Portrait is Made by the Artist
Over A Print With an Air Brush

We only ask that you appreciate this work and be kind enough to display it and recommend it at its true worth and not at the amount you expended for it.

All photographs returned with finished work.

(b) Subsequently, another representative of respondent, known as a "proof passer" calls at the home of the customer, exhibiting the enlargement in black and white form and inquiring as to the wishes of the customer with respect to colors for the enlargement. At this point, and for the first time, the representative mentions a frame or glass for the enlargement. Customers are told that because of the convex or curved shape of the picture a special type frame is needed and that the ordinary frame containing flat glass will not fit it; that the picture will not look right or will crack if a frame of the type sold by respondent is not ordered; that the picture is baked, sealed, or pressed into the frame in a special way; that the glass in the frame is of a special construction and is nonbreakable. Many of the customers, having already paid for all or part of the enlargement, feel obliged to order a frame so as to protect the investment already made. The said frames are priced at from \$12.50 to \$22.00. Respondent's representatives exhibit sample framed colored enlargements and state that the colored enlargement and frame, when ordered, will be of the same type as the sample. If a frame is ordered, all or part of the purchase price thereof is collected. At a subsequent date a frame colored enlargement is delivered by a delivery man who collects any balance which may be due.

PAR. 4. The sales plan used by respondent's sales agents and representatives, and the statements and representations made by them, as above found, were and are false, misleading and deceptive in the following respects: The price of \$3.98 charged for the colored enlargement is not a "special," "reduced," or "discounted" price but is the regular and usual price charged for enlargements by respondent; the so-called "lucky envelope" or "draw" gives the holder thereof no advantage in price whatsoever since practically all purchasers draw a "lucky envelope" and all purchasers may purchase a colored enlargement at the price quoted by respondent, said procedure merely being a sales scheme to gain entry into the home of prospective customers and to facilitate the sale of colored enlargements; and frequently the colored enlargements of the photographs are different from and inferior in quality, workmanship, and appearance to the samples exhibited to the customers by respondent's representatives.

Respondent, by failing to properly disclose that the enlargements are of a convex or curved shape prior to the sale of the enlargement and collection of part or all of the purchase price, have unfairly and deceptively led purchasers into the erroneous belief that such enlargements are suitable for framing in the conventional type frame and have caused them to order colored enlargements based on said erroneous belief. Although the certificate given to the customer refers to the fact that the picture is "convexed," this is not given to the customer until after the sale is made, is frequently overlooked by the customer, and

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many customers do not understand the meaning of the term. The statements made by respondent's representatives that the glass used in the frame is a special, nonbreakable glass, and that the enlargement is pressed or baked into the frame in a special way are false, misleading, and deceptive in that the said glass is ordinary glass and may be broken, and the pictures are placed in the frame in the conventional manner.

While the public is led to believe, through the statements and representations of respondent's sales agents, that respondent is engaged primarily in selling colored enlargements and thus are induced to purchase such enlargements by reason of the relatively small cost thereof, the entire selling scheme and plan has for its prime purpose the selling of frames and glass therefor from which respondent makes a substantial profit, rather than the sale of enlargements from which respondent makes little, if any, profit. The entire scheme is a form of bait merchandising which is primarily for the purpose of, and has the effect of, misleading and forcing the purchaser to buy something which he did not originally intend.

PAR. 5. The use by the respondent of the plan, acts, practices, methods, and representations in connection with the offering for sale and sale of his said products in commerce, as aforesaid, including the failure to reveal essential and important facts in connection therewith, has had and now has the tendency and capacity to and does mislead and deceive the purchasing public concerning the actual character and purpose of the original offer, including the identity of the actual product respondent proposes to sell and concerning the quality, value, and usual selling price of said enlargements and unfairly places purchasers in the position where they feel obliged to purchase frames and glasses from respondents in case they wish to have the enlargements framed, which is usually the case. The aforesaid acts and practices lead purchasers erroneously to believe that the representations so made and used by the respondent and the implications arising therefrom are true and cause a substantial number of the purchasing public to purchase substantial quantities of said products.

PAR. 6. While the complaint contains certain additional charges, not mentioned above, these are not sustained in the record by reliable, probative and substantial evidence.

CONCLUSION

The aforesaid acts and practices of respondent, as hereinabove found, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

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Order

ORDER

It is ordered, That respondent, Chester Burr Renner, individually, and trading as Home Arts, or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce," is defined in the Federal Trade Commission Act, of respondent's photographic enlargements or reproductions and of frames and glasses therefor, do forthwith cease and desist from:

1. Representing, directly or by implication, that the price at which any of respondent's products is offered for sale represents a special, reduced or discounted price, when such price is in fact the customary price at which said product is regularly sold.

2. Representing, by any means or in any manner, that the respondent is conducting a drawing, lottery, plan, or scheme whereby a prospective customer is given a chance to obtain any of respondent's products at a special, reduced or discounted price; or that a prospective customer, by participating in any drawing, lottery, plan, or scheme, may be entitled to receive any of respondent's products at a special, reduced or discounted price.

3. Exhibiting to a prospective customer, as a sample, any photograph or picture which is not in fact representative of the pictures sold by respondent; or representing, directly or by implication, that a picture to be made and delivered will be equal in type, quality, and workmanship to the sample displayed to the customer, unless the picture thereafter delivered is in fact of the same type, quality, and workmanship as such sample.

4. Concealing from, or failing to disclose to, customers at the time pictures are ordered that the finished picture will be so shaped and designed that it can ordinarily be used only in an odd-style frame which is sold by respondent.

5. Representing that the glass in the picture frames which respondent sells is special or unbreakable or that the picture is baked or pressed into the frame in a special way, if such is not the fact.

ORDER TO FILE REPORT OF COMPLIANCE

It is ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist [as required by said declaratory decision and order of November 4, 1952].

IN THE MATTER OF
GEORGE ALTSTADTER TRADING AS ARGENTUM
LABORATORIES

COMPLAINT, DECISION, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5909. Complaint, July 23, 1951—Decision, Nov. 6, 1952

There is a preference on the part of a substantial portion of the purchasing public for perfumes and toilet waters compounded in France over those compounded in the United States.

A representation that a perfume contains pure gold has an appeal to the purchasing public because of the prestige and the intrinsic value of gold; and a representation that a specific perfume contains "Pure 24 Carat Gold" when samples analyzed by the Bureau of Standards show a content of less than 2 thousandths of a microgram of gold per milliliter, which is less than the lowest concentration of gold found in sea water, is false and deceptive.

Where an individual engaged in the compounding of perfumes and toilet waters and the competitive interstate sale and distribution thereof—

(a) Represented that said products were compounded in or imported from France through prominently displaying in newspapers and other advertisements the words "Greetings from Paris", together with a picture of the Eiffel Tower, and through use of such brand or trade names as "Parfum de Soir", "Danse Apache", "Bois de Rose", "Jasmin Fleurance", "Feuille de Violette", and "The Old French Glory";

The facts being that all of his said products were compounded in the United States; while certain oils used therein were imported from France, all other materials were obtained in this country, and even those perfumes which contained French oils contained domestic oils also;

(b) Falsely represented in his advertising that the price at which certain of his products were offered was a special price for a limited time only; when in fact it was his usual and customary price;

(c) Falsely represented as aforesaid that his perfumes contained a substantial amount of gold which caused the fragrance to last longer; notwithstanding the fact that the gold content was infinitesimal and much smaller than that found in ordinary sea water, and was incapable of exerting any substantial or appreciable effect upon said perfumes; and

(d) Falsely represented that a bottle of perfume was given free to purchasers of his "Treasure Chest" assortment of perfumes and that the purported gold contained in his said products was also given free to purchasers; the facts being that in order to obtain the so-called "free" perfumes it was necessary to purchase others, the price of which included a charge for the "free" product; and the price of any gold contained in the perfume was included in the charge therefor;